IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (ST.) NO.14392 OF 2006
IN
WRIT PETITION NO.8732 OF 2005

Devendra Rangnath Dhomse ..Petitioner.
Vs.
State of Maharashtra and others ..Respondents.

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Mr. R.K. Mendadkar for the Petitioner.
Mr. C.R. Sonawane, AGP for Respondents 1 to 3.

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CORAM: **B.H. MARLAPALLE &**
DR. D.Y. CHANDRACHUD, JJ.

20th September, 2007.

P.C. (Per Dr. D.Y. Chandrachud, J.) :

1. Upon the delay being condoned, the Review Petition has been taken up for disposal with the consent of both the learned counsel.

2. In these proceedings review has been sought of the order passed by this Court on 7th March, 2006, by a Division Bench of which one of us (Dr. D.Y. Chandrachud, J.) was a member.

3. The Petitioner had instituted Writ Petition 8732 of 2005 to challenge an order dated 28th October, 2005 passed by the

Divisional Caste Certificate Scrutiny Committee, Konkan Division, Navi Mumbai by which the caste certificate issued to the Petitioner was held to be invalid. The claim of the Petitioner was that he belongs to the Rajput Bhamta community which is notified as a Nomadic Tribe. For the academic year 2004-05 the Petitioner was admitted to the engineering degree course at the Fourth Respondent. The foundation of the case of the Petitioner was that the Divisional Caste Certificate Scrutiny Committee, Konkan Division, Navi Mumbai (the Second Respondent) had validated the caste certificate issued to his own sister, Kalpana Rangnath Dhomse. The Scrutiny Committee, declined to validate the caste certificate issued to the Petitioner and furnished the following reasons for not accepting the case of the Petitioner, founded as it was on the validity certificate issued to his sister:

> "In reply to the Notice applicant has submitted validity certificate issued by Mumbai Caste Scrutiny Committee to his sister. No other proof has been submitted. He has not submitted any documents/ proofs on the basis of which abovesaid validity certificate was issued to Miss Kalpana Rangnath Dhomase. Advocate of the applicant has mentioned in his letter dated 27.05.2005 that the documents on the basis of which said validity certificate was issued are missing and search of the same is going on. However till date said documents are not submitted before the Committee. Applicant and his father were present on 27.05.2005 before Committee and they were given ample opportunity to present their say. However,

> they have submitted that they do not have any other documents to produce before Committee."

4. When the Writ Petition filed before this Court to challenge the order of the Scrutiny Committee came up for admission, the following order was passed by the Division Bench on 2nd February, 2006:

> "The caste certificate of the Petitioner's sister was validated. When the Petitioner applied for validation of her caste certificate, the Caste Committee directed the Petitioner to produce documentary evidence based on which the certificate was validated in favour of the Petitioner's sister. The Petitioner did not produce the same. Consequently, the claim of the Petitioner was rejected.
>
> It is open to the Petitioner within two weeks from today, to produce documents on the basis of which the Petitioner's sister's certificate was validated. If such documents are produced, the case of the Petitioner will be considered.
>
> S. O for two weeks."

Despite this order, no further documents were produced. Hence, while disposing of the Writ Petition on 7th March, 2006 this Court noted that the Petitioner had failed to produce the documents on the basis of which the validity certificate was issued to his elder

sister before the Scrutiny Committee and even before this Court. The underlying documents were not forthcoming after the directions issued on 2nd February, 2006. This Court then in paragraph 4 of the order recorded the following statement of counsel appearing for the Petitioner:

> "Today, at the time of hearing, learned counsel for the petitioner submitted that even though the petitioner was informed the above order, the petitioner has not given any instructions as to whether he wants to produce the documents before the Committee."

The Court therefore held that under these circumstances, there was no option but to conclude that the Petitioner had no documents to produce before the Caste Scrutiny Committee to substantiate his caste claim. The Petition was accordingly dismissed.

5. In the Review Petition it has been stated that the Petitioner had obtained a 'no objection' from the earlier advocate who was engaged to conduct the writ proceedings on 28th February, 2006 so as to enable the Petitioner to engage some other advocate. The grievance of the Petitioner is that when the Writ Petition came up for admission on 7th March, 2006, the earlier

advocate appeared in the case without informing the Court that a no objection had already been furnished to engage another advocate. Moreover, it has been averred that the earlier advocate had not informed the Petitioner of the directions issued by this Court on 2nd February, 2006 and it was only on 23rd March, 2006 when the Petitioner came to Mumbai and enquired of the status of the proceedings that he obtained knowledge of the fact that the Petition has been dismissed. The Petitioner has therefore submitted that the determination of his social status in terms of the claim to belong to a Nomadic Tribe should not in the interest of justice be allowed to stand concluded due to the default of the earlier advocate. The Petitioner has in paragraph 4 of the writ proceedings adverted to the following documents as having been tendered by his elder sister Kalpana before the Scrutiny Committee on the basis of which, it is claimed that the caste validity certificate was issued to his sister:

> "(i) Original Caste Certificate dated 1-8-1996 issued by the Deputy Collector and Special Land Acquisition Officer, Mumbai Suburban District.
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> (ii) School Leaving Certificate of Kum. Kalpana Rangnath Dhomse;
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> (iii) Certificate issued by the Gram Panchayat of Borale in respect of Balasaheb Tukaram Dhomse, showing his

caste as Rajput Bhamta;

(iv) Affidavit showing exact relationship of Shri Yashwant Kautik Markar and Amit Ashoksing Rajput with Kum. Kalpana Dhomse;

(v) Caste Certificate of Mohan Motiram Dhomse;

(vi) Affidavit showing exact relationship with Kum. Kalpana Rangnath Dhomse by Shri Mohan Motiram Dhomse;

(vii) Caste Validity Certificate in respect of Amit Ashoksing Rajput, the cousin brother of the petitioner;

(viii) Judgment and order passed by this Hon'ble Court in the case of Yashwant Kautik Morkar, the son of paternal aunt;

(ix) Certificate issued by the Grampanchayat of Gorthan in respect of Rangnath Chimaji Dhomse, stating that he belongs to Rajput Bhamta caste as revealed in the local inquiry report.

(x) School Leaving certificate of Rajendra Vitthal Dhomse, the paternal blood relative of the petitioner.

(xi) Caste Certificate of elder sister Mahindra Rangnath Dhomse, of the petitioner.

(xii) Birth Certificate of Kum. Kalpana Rangnath Dhomse.

(xiii) Xerox copy of Ration Card and Income Certificate.

(xiv) School Leaving certificate and Caste Certificate of Kum. Vandana Rangnath Dhomse, the real sister of the petitioner.

(xv) School Leaving Certificate of Kum. Yogita Bhaulal Dhomse, another paternal relative of the petitioner.”

6. We have heard the learned counsel appearing for the Petitioner and the learned AGP for the State. An affidavit has been filed in these proceedings by Mr. C.V. Nandedkar, Member Secretary, Divisional Caste Scrutiny Committee, Konkan Bhavan, Navi Mumbai in which the following statement has been made:

> "I say that accordingly I have taken due and diligent search of the office of the Divisional Caste Scrutiny Committee, Navi Mumbai and I found that the original records in respect of the Petitioner is not found in the office of the Divisional Caste Scrutiny Committee. I say that only xerox copy of the caste certificate as issued to Kum. Kalpana Rangnath Dhomse was found in the office of the Divisional Caste Scrutiny Committee. ..... I say that except the aforesaid xerox copy of the caste certificate of Kum. Kalpana Rangnath Dhomse, no other record is available with the office of the Divisional Caste Scrutiny Committee, Navi Mumbai in respect of Kum. Kalpana Rangnath Dhomse."

7. It has been stated that the Scrutiny Committee is unable to produce the original records in respect of the Petitioner's sister Kalpana Rangnath Dhomse.

8. On 23rd August, 2007 counsel appearing for the

Petitioner was granted an adjournment of two weeks, on his request in order to produce the original of the caste validity certificate issued to the Petitioner's sister, which had been submitted to the Ayurved College at Pune where she was admitted for a post graduate degree course. By an order dated 6th September, 2007 this Court recorded that the advocate for the Petitioner had placed on record the original certificate of validity (bearing No.38344) issued on 31st May, 2002 by the Caste Scrutiny Committee validating the caste claim of Kalpana Rangnath Dhomse, who is the sister of the Petitioner. The same was directed to be kept in a sealed cover with the Registrar – Judicial. The learned AGP sought an opportunity to take instructions from the Scrutiny Committee and to call upon the officer concerned to remain present before the Court. On 20th September, 2007 the Secretary of the Divisional Caste Certificate Scrutiny Committee was present before the Court. During the course of the hearing, the Secretary of the Scrutiny Committee informed the Court that upon scrutiny of the record, he does not dispute the fact that a validity certificate was issued to the sister of the Petitioner, since prima facie a perusal of the certificate would show that it bears a reference number (38344) of the Scrutiny Committee. The Court

was, however, informed that all the original records pertaining to the relevant period are in the custody of the CID since it would appear that a large number of certificates were issued at the relevant time fraudulently. The matter, the Court is informed, is under investigation. Therefore, it was submitted before the Court that while the factum of the issuance of the document in favour of the Petitioner's sister is not in dispute, it would be necessary to scrutinize the underlying basis on which the document was issued and if it is found that the entire claim was fraudulent, it would not be permissible for the Petitioner to claim any benefit on the basis of a fraudulent document.

9. Counsel appearing for the Petitioner has submitted that once the caste claim of the real sister of the Petitioner has been validated, as would emerge from the issuance of a validity certificate to the Petitioner's sister, the Petitioner would be entitled as a matter of course to the issuance of a validity certificate. We are of the view that this submission cannot be accepted straight away without further investigation in the review proceedings. We have already noted that despite an opportunity furnished by this Court, the Petitioner had not produced any documentary material

to establish the basis on which a validity certificate was claimed by the Petitioner's own sister before the Scrutiny Committee. The Petitioner claims that an intimation of the order passed by this Court on 2nd February, 2006 was not furnished by his earlier advocate. Even if this is so, the fact does remain that before the Divisional Caste Scrutiny Committee also the underlying documentary material was not forthcoming, something which has been referred to in the order dated 28th October, 2005 passed by the Scrutiny Committee. As we have already noted in the affidavit filed before this Court the Committee has pointed out that the original records in respect of the Petitioner are not found and save and except for a photocopy of the caste certificate issued to the Petitioner's sister, no original records in respect of the Petitioner's sister are available in the office of the Scrutiny Committee.

9A. In a matter as important as the determination of the caste claim of the Petitioner, we are of the view that the matter would require a further investigation by the Scrutiny Committee. As already noted earlier, the Petitioner has in paragraph 4 of the Review Petition adverted to 15 documents on the basis whereof the caste claim of his own sister was validated by the Scrutiny Committee. Having regard to the ramifications both of a validation,

or as the case may be, the invalidation of a caste claim, we are of the view that it would be only appropriate and proper, that the matter should be remitted back to the Scrutiny Committee for a fresh decision. The Scrutiny Committee, the Second Respondent to these proceedings shall reconsider the claim of the Petitioner in the light of the documents upon which reliance is placed by the Petitioner. In order to facilitate this, we recall the order dated 7th March, 2006 passed in Writ Petition 8732 of 2005 and quash and set aside the order dated 28th October, 2005 passed by the Second Respondent. While doing so, however, we clarify that we have not entered any finding on the correctness of the reasons which have weighed with the Scrutiny Committee in its order dated 28th October, 2005 and the purpose of the order of remand is to furnish one further and final opportunity to the Petitioner to substantiate his claim of belonging to the Rajput Bhamta community on the basis of the documentary material in the possession of the Petitioner.

10. We dispose of the Review Petition in the aforesaid terms. The Petitioner shall appear before the Second Respondent for receiving directions on 15th October, 2007 and shall file on that day a comprehensive representation annexing such documents

upon which the Petitioner seeks to place reliance. The Second Respondent shall pass final orders on the claim of the Petitioner on or before 31st December, 2007. The Review Petition shall accordingly stand disposed of. In the circumstances, of the case, there shall be no order as to costs.

The original caste validity certificate which was directed to be placed in a sealed cover shall now be returned to the advocate appearing on behalf of the Petitioner by the registry.

B.H. MARLAPALLE, J.

DR. D.Y. CHANDRACHUD, J.